

PUBLISHING AND ROYALTY AGREEMENT BETWEEN  
ARCADIA PUBLISHING, INC., AND THE CITY OF AUSTIN FOR USE OF  
PHOTOGRAPHS IN THE UT AUSTIN: THE FIRST 100 YEARS BOOK

This Publishing and Royalty Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between Arcadia Publishing, Inc., a South Carolina corporation with its principal office at 420 Wando Park Boulevard, Mt. Pleasant, South Carolina 29464 (Publisher), and the City of Austin, a Texas home-rule municipal corporation, through the Austin History Center (City).

Publisher is in the business of coordinating, creating and publishing books for commercial sale. Publisher desires to publish a book about UT Austin and has contracted with writer, Lori Duran (the Author), to write the copy for the book. Publisher wishes to include in the book certain historic photographs which are owned by City and housed at and managed by City's Austin History Center. City wishes to authorize Publisher to publish certain photographs in the book in exchange for the rights to certain royalty payments and credit, as described below. The book about UT Austin is referred to below as "Book".

1. Publication & Marketing. Publisher agrees to publish and market the Book at its expense, and agrees that City shall have no financial obligations under this Agreement. The Publisher shall use all reasonable efforts to publish the Book (unless prevented by circumstances outside its control) within twelve (12) months of delivery of the photographs and copy by the Authors to the Publisher.

2. Waiver of City Fees/ Grant of License. In consideration of the royalty payment obligations undertaken by Publisher and the Publisher's agreement to credit the City and Austin History Center on the Book, as described in this Agreement, City waives all photo reproduction and other fees required by the City's fee schedule. City grants to Publisher a five-year non-exclusive license with a royalty fee to City, as described below (License), to print, reproduce, enhance, display, and transmit the photographs listed in Exhibit A as necessary to publish the photographs in the Book, including but not limited to digital or electronic media. Publisher may also crop the photographs provided that the Austin History Center Photo Curator approves the cropping in advance of publication. For cropped photographs, Publisher agrees to include citation language provided by the Austin History Center to denote that the original image has been changed. Exhibit A is attached to and made a part of this Agreement for all purposes.

3. Term and Termination. The term of this Agreement and the License granted herein shall be for five years and shall become effective following approval by the Austin City Council of the fee waivers and upon signature of this Agreement by the last party to sign (Initial Term). Unless terminated during the Initial Term in accordance with Section 12, the Agreement and the License shall automatically renew for one additional five-year term upon expiration of the Initial Term (Second Term). Either Publisher or City may terminate the Agreement and License without cause at any time during the Second Term by providing the other party with not less than sixty (60) days written notice of termination. Termination or expiration of the License shall not impact Publisher with respect to any Book sale contract Publisher has entered into with a third party prior to the date of termination or expiration. Publisher agrees to provide City with copies

of any such contracts upon request by City, both during the term of this Agreement and following the termination date.

#### 4. Digital Images

City agrees to provide the photographs to Publisher, at no charge, in digital format. City shall provide the digital images within thirty (30) calendar days following the effective date of this Agreement.

#### 5. Limited Purpose of License

Publisher acknowledges and agrees that this license is for the sole purpose of publishing the photographs in the Book, and that this Agreement shall not alter in any way the City's ownership rights and copyright to the photographs. Publisher also acknowledges and agrees that this license is limited to reproduction of the Book in a paper medium and does not convey any ancillary rights, including but not limited to any rights related to electronic storage, digital media, electronic publication, or companion products. The Publisher agrees to use the photographs and digital images provided under this Agreement solely for publication in the Book and to maintain strict control of the digital images and photographs in order to avoid access, use or duplication by a third party. Publisher also agrees to destroy the digital images and any prints within ninety (90) days of publication of the Book, and to send City a written confirmation that the digital images and prints have been destroyed.

#### 6. Credits

The Publisher agrees to credit the photographs to the City and the Austin History Center by printing the following credit line next to each photograph: "Image # \_\_, Austin History Center, City of Austin". In addition, Publisher agrees to include the Austin History Center logo on the back cover of the Book.

#### 7. Copyright Ownership

City warrants that it is the sole owner and copyright holder of the photographs listed in Exhibit A and that publication of these photographs in the Book will not violate or infringe upon the copyright, license or proprietary rights of any third party. Publisher acknowledges that it is solely responsible for obtaining, or ensuring that the Author or other contributors to the Book have obtained, all authorizations, licenses or consents necessary to publish the text, illustrations and any photographs included in the Book that are not provided by City under this Agreement (Non-City Materials). Publisher warrants that it has title to the Non-City Materials published in the Book or that it has obtained valid authorizations or licenses to publish the Non-City Materials, and that no claims have been made by any person or entity with respect to the Non-City Materials. Publisher also warrants that only the City and the Authors (or licensees of the Authors) shall provide material to be included in the Book and that the Authors have warranted that the Non-City Materials included in the Book will not violate or infringe upon the existing copyright, license or proprietary rights of others.

#### 8. Copyright Notice

The Publisher warrants that the City's copyright notice for the photographs provided by City will be printed upon every copy of the Book on verso of the title page and will appear as follows: "*For all photographs that are attributed to City of Austin - Copyright [insert year of first publication] City of Austin.*"

#### 9. Compensation to City

The Publisher shall pay City royalties described in Exhibit **B** with respect to the Book. The accounts of sales of the Book, together with any sums that may become due, shall be delivered to the City and settled within ninety (90) days of the end of the six month periods ending the 31<sup>st</sup> of December and the 30<sup>th</sup> of June of each year throughout the Term (September 30 for the six month period ending June 30 and March 31 for the six month period ending December 31) provided, however, that no account need to be submitted, unless specifically demanded, nor payment made, in respect of any period in which the sum due is less than thirty dollars (\$30.00), in which case the amount will be carried forward to the next accounting date.

10. Complimentary Copies of Book; Purchases of Book by City . The Publisher shall send City three (3) complimentary copies of the Book within seven (7) days of the publication date.

11. Trademark – Book Title. The City acknowledges that the Publisher owns all right, title and interest in the trademark rights in the title of the Book, UT Austin: The First 100 Years, (the "Trademark"). City may not use the Trademark without authorization from the Publisher and shall not object to, or otherwise interfere with the use of registration by Publisher of the Trademark or attack or contest, in any manner, such Trademark.

12. Default and Termination. This Agreement may be terminated in writing by the Publisher in the event of a default by the City if the default has not been cured to Publisher's satisfaction within sixty (60) calendar days of receipt of written notice of default by the Publisher. In the event of a default by the Publisher which has not been cured to City's satisfaction within sixty (60) calendar days of receipt of written notice of the default by City, all licenses and rights granted to Publisher under this Agreement shall revert to the City forthwith and without further notice, and neither party shall have any further rights or liabilities under this Agreement provided, however, that Publisher may continue to sell the Book inventory that exists as of the termination date, and Publisher's duty to provide accounts of Book sales and royalty payments for Books shall survive the termination of this Agreement. In addition to the termination provisions set forth above, the parties agree that City or Publisher may terminate this Agreement immediately, upon written notice, if the Book has not been published and offered for sale within eighteen (18) calendar months following the effective date of this Agreement.

13. Notices. All notices and requests required or permitted under this Agreement shall be in writing and may be given by: (a) hand delivery to the party to be notified; (b) deposit in the United States mail, registered or certified, with return receipt requested and postage prepaid, and addressed to the party at the address set forth below; or (c) by confirmed facsimile at the numbers shown below. Notice given under this section shall be deemed delivered and effective

on the earlier of actual receipt or three calendar days following deposit in accordance with the requirements of subsection (b) above.

Arcadia Publishing, Inc.  
Attn: Adam Ferrell, Publishing Director  
420 Wando Park Boulevard  
Mt. Pleasant, South Carolina 29464

*Facsimile Number: 843-853-0044*

Michael Miller  
Manager, Austin History Center  
City of Austin  
P.O. Box 2287  
Austin, Texas 78768

*Facsimile Number: 512-974-7483*

*With copy to:*

Roosevelt Weeks, Director  
Austin Library Department  
City of Austin  
P.O. Box 2287  
Austin, Texas 78768

*Facsimile Number: 512- 974-7403*

14. Indemnification. Publisher shall, at its own expense, indemnify, defend and hold harmless the City and Austin History Center, their employees and officers, from and against all liabilities, damages, costs or expenses (including court costs but excluding attorneys fees) arising out of or resulting from any claim that all or any portion of the Non-City Material(s) published in the Book infringe the intellectual property rights or licensure rights of a third party; and from any claim based upon the Publisher's alleged breach of any of Publisher's representations or warranties stated in this Agreement. City shall promptly notify Publisher of any such written claim or proceeding and shall not settle any such claim or proceeding without Publisher's prior written consent. However, City's failure to provide such timely notice to Publisher will not invalidate Publisher's obligations under this provision. Publisher shall have the right to control the defense of any such claim. City shall have the right at its expense to participate in the defense with counsel of its choice or monitor such claim, provided that Publisher shall have the right at all times to retain or resume control of the conduct of such defense.

15. Entire Agreement/Amendment. This Agreement constitutes the entire agreement between the parties with respect to the publication of a book about the University of Texas at

Austin and supersedes any prior agreements and understandings, both oral and written. This Agreement may be amended only in a writing executed by both parties.

16. No Third Party Beneficiaries. This Agreement is not intended to confer, and shall not be deemed to confer, any rights upon any other person or entity.

17 Assignment. Neither party may transfer any of its rights or obligations under this Agreement without the prior written consent of the other party.

18. Independent Contractors. This Agreement shall not be construed as creating a partnership, joint enterprise, or a joint venture between the parties. Publisher shall perform all services required under this Agreement as an independent contractor.

19. Jurisdiction and Venue. This Agreement is made under and shall be governed by the laws of the State of Texas, without regard to conflicts of laws principles which would apply the law of any other jurisdiction. Venue for any dispute arising out of or concerning this Agreement shall be proper in Travis County, Texas.

**ARCADIA PUBLISHING, INC.**

BY: \_\_\_\_\_

Adam Ferrell, Publishing Director

DATE: \_\_\_\_\_

**CITY OF AUSTIN**

BY: \_\_\_\_\_

Printed Name: Roosevelt Weeks, Director, Austin Public Library

DATE: \_\_\_\_\_

## EXHIBIT A

### PHOTOGRAPHS – UT Austin: The First 100 Years

The parties agree that the following City photographs will be provided to Publisher, in digital image format, for publication in the Book.

<b>pi</b>	<b>Book #</b>	<b>AHC Image #</b>	<b>Description</b>
1	045	PICA 19556	Univ of TX Athletics Track U3280
2	012	PICA 07945	metaph124219_xl_PICA07945c Woman on steps
3	039	PICA 08141	metaph124224_xl_PICA08141c Early football
4	002	PICA 08451	metaph124238_xl_PICA08451 Old Main Building
5	003	PICA 18261	metaph125102_xl_pica18261c Blind Asylum
6	005	PICB 12233	qAF – Biography Littlefield George Washington oversize
7	025	PICB 08767	AF- Biography Sutton, William Seneca 1860-1928
8	027	C00140	metaph125127_xl_C00140 View of the Capitol
9	041	C05106	metaph125306_xl_C05106-bc Football Gymnastics
10	026	C06858	metaph125333_xl_C06858 Battle Hall(?)
11	014	PICA 07931	AF The Univ of Texas – Grounds the Peripatus U3800(5)
12	035	PICA08082	AF The Univ of Texas -Soc Life & Customs U4500 (13) Varsity Circus (the elephants)
13	036	PICA 08086	AF The Univ of Texas -Soc Life & Customs U4500 (13) Varsity Circus (flower covered float/wagon)
15	034	PICA 13251	AF Univ of Texas – Colleges and Depts. – Fine Arts U3540 (7) Curtain Club
16	010	PICA 19418	AF The Univ of Texas -Soc Life & Customs U4500 (18) March 2
18	037	C07758	University of Texas Clark Field
19	086	AR.2013.029(16 3)	AF RESTAURANTS LUNCHROOMS R3800 (D) “Dirtys” Please see AR.2013.029 McCree Papers original
20	085	PICA 02251	metaph123900_xl_PICA02251 The Drag
21	076	PICA 07935	AF – Univ of Texas – Grounds Santa Rita No. 1 U3800(6)
22	077	PICB 03321	AF – Biography Battle, William James 1870-1955
23	043	C03474	metaph125268_xl_C03474c UT Main Building
24	038	C07560	AF – Biography Disch, William John 1874-1953
25	032	PICA 08057	metaph124221_xl_PICA08057 Men in WWI Uniforms
26	082	PICA 19506	metaph124494_xl_PICA19506c 1933 UT Plan
27	084	C06777	metaph125331_xl_C06777 UT Building & Pond
28	067	C09993	metaph125364_xl_C09993 Memorial Stadium
29	066	C10047	metaph125366_xl_C10047c UT vs Notre Dame
30	080	PICA 17321	AF The Univ of Texas -Soc Life & Customs U4500 (30)

			<b>Cheerleaders</b>
31	071	PICA 25652	AF The Univ of Texas- Buildings – Gregory Gym U3435
32	070	PICA 28567	AF The Univ of Texas -Soc Life & Customs U4500 (11) Longhorn Band
33	078	PICB12002	AF – Biography Rainey, Homer Price 1896- <i>Courtesy also of the Walter Long Collection</i>
34	109	ND-44-123a-03	AF – Univ of Texas – History U3900 (15) Rainey Controversy ND-44-123a-03
35	001	C06713	Metaph125329_xl_C06713 view of Old Main
36	091	nd-59-4871-03	metaph19315_xl_nd-59-4871-03 International Center
37	101	nd-54-517-01	metaph19421_xl_nd-54-517-01 UT Memorial Museum
38	118	nd-51-169-02	metaph19456_xl_nd-51-169-02 The Co-Op
39	112	nd-42-136-02	metaph62504_xl_nd-42-136-02 Governor Dan Moody
40	115	nd-43-120-04	metaph62526_xl_nd-43-120-04 J. Frank Dobie
41	116	nd-47-152-01	metaph62748_xl_nd-47-152-01 John Connally
42	104	nd-49-322-01	metaph62955_xl_nd-49-322-01 Dr. W.J. Battle
43	113	nd-49-339-01	metaph62967_xl_nd-49-339-01 Carl Eckhardt
44	094	nd-49-543-06	metaph63021_xl_nd-49-543-06 A-Bar Hotel
45	111	ND-52-139-01	metaph74808_xl_ND-52-139-01 Ralph Yarborough
46	099	PICA19649	metaph124500_xl_PICA19649c Longhorns & Big Boy
47	117	PICA26827	metaph124872_xl_PICA26827 The Drag
48	cover	PICA 07753	metaph124216_xl_PICA07753 UT Tower
49	114	ND-50-181-04	metaph329307_xl_ND-50-181-04 Tom C. Clark
50	106	ND-50-283-02	ND-50-283-02 Heman Sweatt
51	119	PICA 09547	PICA09547 The Night Hawk
52	105	PICB 11735	PICB11735 George Isidore Sanchez
53	108	PICB 17506	AF – Biography Paredes, Americo
54	042	AF-P6150 (45) (008)	Postcard of Littlefield Memorial Fountain Univ of TX
55	087	AF-P6150 (45) (009)	Postcard of U. of Texas Aerial View & Numbered Bldgs.
56	028	AF-P6150 (45) (010)	Postcard of Campus View Univ of Texas (crossing trails)
57	017	AF-P6150 (45)(011)	Postcard of Campus View (few buildings taken in 1906)
58	029	AF-P6150 (45)(012)	Postcard of Univ of Texas (taken from a distance)
59	126	AF-P6150 (45)(013)	Postcard of Texas Stadium with Campus Buildings 1960s
61	044	AF- P6150(45)(014)	Postcard of Main Entrances of UT
62	065	AF- P6150(45)(015)	Postcard of Memorial Stadium,, UT-28

63	062	AF-P6150(45)(016)	Postcard of UT Y.M.C.A Building
64	015	AF-P6150(45)(017)	Postcard of Engineering Building at UT (1904)
65	107	ND-49-191-01	metaph34105_xl_ND-49-191-01 Dr. Castaneda
66	161	PICB 10965	AF – Biography Campbell, Earl Christian Retire #20
67	018	PICA 07914	AF-Univ of TX Bldgs. U3400 (42) “Shacks”
68	130	ASPL_DM-67-32626	metaph1011238_xl_ASPL_DM-67-32626 Engineering Building exterior
69	129	ASPL_DM-67-32628	metaph1011249_xl_ASPL_DM-67-32628 UT Fountain
70	145	ND-65-232-02	metaph33313_xl_ND-65-232-02 Cowboys (Silver Spurs)
71	136	PICA 13051	AF-Celebrations C1900(4) Eeyore’s Party
72	132	PICA37423	AF-Murders Mass M8960(1) Whitman Charles Joseph smoke coming from the tower
73	133	PICA37429	AF-Murders Mass M8960(1) Whitman Charles Joseph aerial view
74	030	PICA 08064	Berlin or Bust WWI Soldiers
75	144	nd-67-423-01	metaph19297_xl_nd-67-423-01 Sorority
76	141	nd-64-a001-04	metaph19017_xl_nd-64-a001-04 John & Nelly Connally
77	137	C07254	AF-Univ of TX-Social Life & Customs U4500 (11) Longhorn Band
78	033	PICA 08003	metaph124220_xl_PICA08003c 1917 Protest
79	009	AF-M9370-001	AF-Music-Sheet Music M9370 Sinclair, John Lang The Eyes of Texas. [Austin, U of T, n.d.]
80	180	PICA 24697	AF– Moving Pic Theaters M8300(14) Varsity Theater
81	168	PICA 28520	AF University of Texas – Buildings U3400 (5) Bauer Hou
82	178	PICA 24462	AF – Beer Gardens B1700(4) Scholz Garden
83	100	C06977	AF-University of Texas – Buildings Brackenridge Field Laboratory U3400(7)
84	069	C07572	AF-University of TX-Buildings Anna Hiss Gym
86	013	C00175	AF-Univ of TX – Buildings U3400(10) Chem Laboratory
87	063	C06728	AF-Univ of TX-Buildings Architecture Bldg. U3400(12)
88	064	C07540	AF-Univ of TX – Buildings U3400(11) Chemistry Bldg.
89	181	PICA 01208	metaph123904_xl_PICA01208 Renaissance Market
90	171	PICA15667	metaph124372_xl_PICA15667c Protest
91	110	ND-51-175a-01	metaph74565_xl_ND-51-175a-01 Bond hearing for Malcolm E. "Mac" Wallace
92	179	PICA08569	AF-Restaurants, Lunchrooms Etc. Les R3800 (L) Les Amis
93	174	PICA 09625	AF-University of TX Social Life & Customs U4500(11) Longhorn Band
94	172	PICA 10238	AF-University of TX- HistoryU3900 (16) Lorene Rogers

95	164	PICA 12435	AF -Univ of TX – Colleges & Depts -Fine Arts U3540(4) Jack Blanton Museum of Art/Archer M. Huntington Ga.
96	157	PICA 12466	AF-University of Texas -J.J. Pickle Research Campus U3300(1) General
97	158	PICA12467	AF-University of Texas -J.J. Pickle Research Campus U3300(1) General
98	165	PICA 12543	AF-University of Texas – Social Life & Customs – Round Up U4550 (1970-1979)
99	040	PICA 08157	Metaph124230_xl_PICA08157c football players
100	022	C00123	Millet Opera House
101	173	PICA 28508	AF-University of Texas- Social Life & Customs U4500(14) Bevo
102	008	C00691	Metaph125170_xl_C00691 women in Bluebonnets
103	159	PICB 14144	AF-Biography Street, James
104	169	PICB 17608	AF-Biography Jordan, Barbara Charline 1936-1996
105	162	PICB 18822	AF-Biography Akers, Fred
106	019	PICA 07899	AF-Univ of TX Bldgs. Pearce Hall The Old Law Building
107	023	PICA 07763	AF-Univ of TX Bldgs. U3400(46) Sutton Hall
108	160	PICB 19943	AF-Biography Royal, Darrell
109	031	PICA 08045	AF-Univ of TX-School of Military Aeronautics U4400 Radio School 1918

Image Total: 104

**EXHIBIT B**  
**ROYALTY EXHIBIT**

Publisher shall pay City a royalty equal to four percent (4%) of the Net Sales, as described below.

The royalty payments to be paid to City shall be based on all copies of the Book that are distributed within or outside the United States with the exception of: a) complimentary copies provided by Publisher to Author, City and other entities that contributed text, photos or images to the Book; b) copies presented at no charge for purposes of promoting the sale of the Book or generating publicity for the Book; c) copies lost through theft, or damaged or destroyed by fire, water, earthquake, or otherwise; d) copies of the Book, or portions thereof, electronically displayed, transmitted, broadcast or distributed by Publisher without compensation for the purpose of promoting sales of the Book, e) copies lost in the course of shipment; f) damaged copies returned by retailers and g) copies sold to retailers or wholesalers and later returned to the Publisher.

Net Sales shall be calculated based upon the total sales amount received by Publisher for distribution of the Book. The parties agree that the sales price charged by Publisher to retailers may be discounted from the list price of the Book based upon the volume of Books ordered by retailers. Royalties paid on those sales shall be based upon the discount price agreed upon between Publisher and the retailer. Publisher will also sell some Books at the list price of \$21.99 each, including those books ordered through Publisher’s web site. Royalties paid on those sales shall be based upon the list price.

City or City’s authorized representative shall have the right upon written notice to audit, examine and copy Publisher’s financial records regarding the Book, including records of account and all documents related to the publication, sales and marketing of the Book. Any audit and examination shall be at the cost of the City unless errors in the amount of royalties paid to City are found and such errors show that City has been underpaid, in which case the cost shall be paid by the Publisher.

Publisher and City agree that royalty payments shall be paid to City in accordance with the schedule described in Section 9 of the Agreement, titled “Compensation to City”.

**PUBLISHER**  
**ARCADIA PUBLISHING, INC.**

**CITY**  
**CITY OF AUSTIN**

By: \_\_\_\_\_  
Printed Name: Adam Ferrell  
Title: Publishing Director  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Roosevelt Weeks, Director  
Austin Public Library  
Date: \_\_\_\_\_